

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3285 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NIRANJANBHAI V LIMBACHIYA

Versus

M M PATEL, EXECUTIVE ENGINEER, GEB & ORS.

Appearance:

MR BH CHHATRAPATI for Petitioner

MR NANDISH CHUDGAR for Respondent No. 1

None present for Respondent No. 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/03/97

ORAL JUDGMENT

The petitioner prayed for issuance of writ of Mandamus and/or any other appropriate direction to the respondent to give him permanent employment with proper seniority.

2. The facts of the case are that the petitioner was employed as workcharged Helper on 19.4.81, in the

divisional office of Gujarat Electricity Board, Deesa, District Banaskantha. He continued as workcharged Helper in the service of respondent till 29th July 1982. During that period, the respondents have undertaken the exercise of making regular appointment on the post of Helper and the petitioner was called for personal interview before the selection committee on 12th July 1982. The petitioner has come up with the case that his name was therein the select list prepared by the Selection Committee, at Sr.No.66. The petitioner was given appointment as workcharged Helper on temporary post for fifty eight days on 2.3.83 and relieved on 29.4.83. The case of the petitioner is that a hostile discrimination has been made in the matter of appointment on the post of Helper. The persons who were at Sr.No.67, 68 & 69 in select list were appointed permanently in October 1982 though all these three persons, as per the case of the petitioner, were having less qualifications than the petitioner. Some malafides have also been alleged against the officer of the Board. It has further been stated that another person named Shri Himmatlal Amthalal Barot, who was at Sr.No.79 in the select list, was also given appointment in October 1982. The writ petition has been got amended by the petitioner and further facts have been stated which are briefly to be noticed. In the year 1985, 1986 and 1987, the Board has made recruitment on the post of Lineman. In the year 1985 and 1987, the petitioner was called for interview and what he stated was that he was selected in the waiting list but appointment was not given. In the year 1989, the vacancies for the post of Helpers were advertised for recruitment. The petitioner applied for the post but he was not considered. The petitioner, by this amendment sought to give out that vacancies of Helper have arisen in the year 1989 and as such, he should have been given appointment on the basis of his name in the waiting list prepared in the year 1982.

3. The respondents have contested this Special Civil Application by filing reply. Both the parties have also filed further pleadings.

4. The learned counsel for the petitioner contended that persons with lesser educational qualifications being relatives of the Executive Engineer of the respondent or being Patels and persons being lower in serial number than the petitioner in select list have been given appointment, which is illegal. It has next been contended that the select list is still operative and in force and as such, the respondents can give appointment to the petitioner whenever vacancies arise from time to

time. Lastly, the learned counsel for the petitioner contended that there is a solemn assurance to the petitioner that he will get job and he has waited for 13 years and this legitimate expectation is required to be fulfilled.

5. On the other hand, the learned counsel for the respondents contended that the select list has fixed life and it has come to an end long back. It is no more in force and as such, there is no question of giving of any employment to the petitioner. It has next been contended that the petitioner was at Sr.No.17 in the waiting list and no person below him has been given appointment during the period of currency of the select list. It has further been contended that the waiting list has become inoperative with effect from November 1983.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

7. The respondents have filed further affidavit in reply to the affidavit dated 16.1.97 of the petitioner. Alongwith this affidavit, the respondents have submitted select list prepared by them in the year 1982. The Divisional Selection panel consisting of the officers mentioned in the document enclosed to the aforesaid affidavit held interviews on 12.7.82 and 13.7.82 and a list of selected candidates as per order of merits for the post of Helper was made out. This list is in two parts. The first part is the main list in which 33 persons were placed. Then comes the waiting list in which 23 persons have been placed and the name of the petitioner is at Sr.No.17. In column No.3 of the list, interview number has been given and in column No.4, marks out of 100, secured by the candidates, have been mentioned. In column No.5 the category, whether SC/ST or BP has been mentioned. From this list, it comes out that the interview number of the petitioner was 66. He got 35 marks in the interview out of 100 and he has been placed at Sr.No.17 of the waiting list. I find sufficient merits in the contention of the respondents that the petitioner has wrongly taken Sr.No.66 as his merit number in the select list. The total candidates in both the list are not more than 56 and this figure, i.e. 66 given by the petitioner as his merit number, is absolutely wrong. The total selectees of both the list are 56. The petitioner has no indefeasible right of appointment merely on the fact that his name has been there in the select list. It is no more res-integra that even if vacancies are available and number of candidates found fit, the successful candidates do not acquire

indefeasible right to be appointed. This right can be denied legitimately. It is also no more res-integra that the appointments from the select list should be restricted to the vacancies which have been advertised or vacancies which have arisen during a year and this list cannot be utilised or given effect to make the appointment to the vacancies which have subsequently arisen. Otherwise it will violate fundamental right conferred of right of consideration for employment in the public employment upon the candidates who acquire eligibility subsequently. The currency of select list also cannot be for an indefinite period. The petitioner is unable to make out a case that any person lower in merits than him has been given appointment. Much emphasis has been laid by the petitioner's counsel on the appointment given to Shri Shankarbhai D. Patel whose name is there at Sr.No.22 in the waiting list, but the respondents have denied this fact. Moreover, this pleading has been made by the petitioner in the affidavit filed by him on 16th January 1997 and not in the original petition. The Executive Engineer of Division Office at Deesa made a statement on oath that Shri Shankarbhai D. Patel was never appointed for the post of regular Helper pursuant to the said waiting list at the Division Office at Deesa. It has further been stated that Shri Shankarbhai D. Patel is not appointed and is not working at Division Office at Deesa. So it is a disputed question of fact and the petitioner has not produced any material on record except his own affidavit, on which it is too difficult to place any reliance. The petitioner has not produced the appointment order of the aforesaid person. The waiting list had become inoperative with effect from November 1983. In view of the facts discussed above, it cannot be said that any of the legal or fundamental rights of the petitioner are being infringed in the present case. In the matter of appointment it is too difficult to accept, moreso in the facts of this case, the contention of the learned counsel for the petitioner based on the doctrine of legitimate expectation.

8. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

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